

I. Project Liability and Stamping of Drawings

A. Project Liability

The following are two FAR citations that address the A/E designer's responsibilities as they relate to design deficiencies and design errors:

36.608 Liability for Government costs resulting from design errors or deficiencies.

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

36.609-2 Redesign responsibility for design errors or deficiencies.

(a) Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the Government does not require a firm to correct such errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

(b) The contracting officer shall insert the clause at 52.236-23, Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

The following is the standard FAR Clause that is included in all of our A/E design contracts to address the responsibility of the A/E as they relate to professional quality and responsibility for their design:

52.236-23 RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR APRIL 1984

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

B. Stamping of Drawings - We require all drawings to be stamped by licensed architects and or engineers. This has evolved from our need to ensure that the A/Es were licensed and/or registered professionals in accordance with the individual state's requirements. We require A/Es to provide a stamped hard copy reproducible as one of the contract deliverables.

II. Information Handling (security and sensitivity issues)

A. NPS/DSC policy as it relates to A/E handling of documents from a security standpoint.

Discussion of current policy as it relates to plans and specs on the IDEASEC website and how we plan to handle documents using the Federal Technical Data Solution (FedTeDS) website. FedTeDs.gov is designed to safeguard acquisition related information of sensitive but unclassified acquisition material. It will be fully integrated with FEDBIZOPS and the Business Partner Network/Central Contractor Registration,

B. Current NPS/DSC policy as it relates to A/E services and release of promotional and marketing materials.

FAR Clause 52.227-17 Rights in Data-Special Works contains release and use restrictions, as well as an indemnification provision:

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

The following is the standard DIAR Clause that is included in all of our A/E design contracts to address restrictions on commercial advertising/marketing as it relates to promotional material:

1452.203-70 RESTRICTIONS ON ENDORSEMENTS - DEPARTMENT OF NOVEMBER 1995
INTERIOR

(a) The contractor shall not refer to contracts awarded by the Department of the Interior in commercial advertising, as defined in FAR 31.205-1, in a manner which states or implies that the product or service provided is approved or endorsed by the Government, or is considered by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The contractor may request a determination as to the propriety of promotional material from the Contracting Officer.

The following is the DSC Clause that is included in all of our A/E design contracts to further address restrictions on the release for publication drawings, renderings, sketches, photographs, etc. that pertain to the facilities for which the A/E is performing services under contract without prior approval:

DSC-40 PUBLICITY

JANUARY 1999

- (a) Except with the prior approval of the Contracting Officer, the consultant shall not release for publication any drawing, rendering, perspective, sketch, photograph, report, specification, cost estimate, or other material of any nature pertaining to the facilities, for which services are performed under the terms of this contract.
- (b) The provision of this article shall extend also to the release of any such material to any person not so authorized by the Contracting Officer.

III. Licensing issues relative to A/Es

At this time, the Federal Government does not have its own registration or licensure requirements. Current FAR, DOI, and NPS policy requires all contractor A/Es to meet the individual State's registration or licensure requirements. Accordingly, if the contract provides for nationwide design services, the A/E team has to demonstrate that they can meet the registration or licensure requirements for all 50 states. This can be accomplished through direct registration or licensure, or if State law allows, through reciprocity with another state. The team's ability to meet the registration or licensure requirements is supposed to be demonstrated in the initial submission of the statement of qualifications.

"Architect-engineer services," as defined in 40 U.S.C. 541, means-

- (1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;
- (2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

This is the FAR citation that addresses the issue of registration of A/Es:

36.609-4 Requirements for registration of designers.

The contracting officer shall insert the clause at 52.236-25, Requirements for Registration of Designers, in architect-engineer contracts, except that it may be omitted from a contract when the design is to be performed-

- (a) Outside the United States, its possessions, or Puerto Rico, or
- (b) In a State or possession that does not have registration requirements for the particular field involved.

This is the FAR Clause that is included in all of our A/E design contracts to address the registration requirements:

52.236-25

REQUIREMENTS FOR REGISTRATION OF DESIGNERS

APRIL 1984

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

This is an excerpt from FAR Subpart 36.601-4 that expands the definition of A/E services.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.